

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND INDUSTRY**

Call to Order: By **CHAIRMAN JOHN HERTEL**, on February 4, 1999 at 9:00 A.M., in Room 410 Capitol.

ROLL CALL

Members Present:

Sen. John Hertel, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Bea McCarthy (D)
Sen. Glenn Roush (D)
Sen. Fred Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 307, 1/29/1999
SB 318, 1/29/1999
SB 326, 1/29/1999
Executive Action: None

HEARING ON SB 307

Sponsor: SENATOR DUANE GRIMES, SD 20, CLANCY

Proponents: Julie Ippolito, Don't Gamble with the Future
Betty Waddell, MT Assoc. of Churches
Verner Bertelsen, MT Senior Citizens Assoc.

Opponents: None

Informational Testimony: Jerry LaChere, MT Lottery

Opening Statement by Sponsor:

SENATOR DUANE GRIMES, SD 20, CLANCY. The purpose of **SB 307** is to establish some guidelines for the future with regard to how the lottery can expand and where it can expand to. The bill defines for future administrations and future directors of the lottery what the intent of the legislature is. The whole issue is on Line 27, Page 1, where it states "lottery may not offer as a lottery game any game based on or representing a form of gambling prohibited by the law of this state." The legislature should set the parameter under which the lottery should function in the future.

Proponents' Testimony:

Julie Ippolito, Don't Gamble with the Future. She submitted written testimony **EXHIBIT (bus28a01)**.

Betty Waddell, MT Assoc. of Churches. The churches have long had a position that opposes any expansion of gambling. The state needs to promote the dignity of labor and not the product to people. The association is concerned about the possibility of using illegal gambling funds on the current lottery tickets and encourages the Committee to pass **SB 307**.

Verner Bertelsen, MT Senior Citizens Association. The Association took a stand two years ago that they were opposed to an increase in gambling and was in support of any decrease in gambling. The Association does not see Montana as being in a comfortable position when it entices senior citizens who are buying groceries to spend the money they probably should have spent on groceries and suggests they are going to get a fortune somewhere down the line. The Association would like the Committee's support of **SB 307**.

Opponents' Testimony: None.

Informational Testimony:

Jerry LaChere, MT Lottery. Any illegal games that the lottery cannot do in terms of representation is truly the only change. The lottery believes, both by state law and support spending by federal law, they could not do these games. The discussion the lottery has had about this always includes what they have had to bring to the legislature who would decide whether or not they could do these additional games.

{Tape : 1; Side : A; Approx. Time Counter : 7.5}

Questions from Committee Members and Responses:

SEN. MIKE SPRAGUE asked if the lottery is following a national trend when they decide what games to put out. **Jerry LaChere** replied the lottery looks at what other lotteries are doing and tries to decide whether that would be a game that would potentially work in Montana. The lottery also forms research to try to get potential players' aspects as to whether or not they would want to play that type of game.

SEN. SPRAGUE asked if the organization polls their members to ask if they favor a game over another game, i.e. how do they get the statistical data. **Verner Bertelsen** stated they do not propose to represent every senior in Montana. Resolutions are proposed at their conventions and that is how and where they become policy for the organization. **SEN. SPRAGUE** asked if the organization was polled on this issue. **Mr. Bertelsen** responded no.

SEN. DALE BERRY asked if the effective date of the bill should become law, would it involve destroying some game tickets already printed. **Mr. LaChere** responded there is a time frame. The lottery has pulled some tickets from printing that would now be considered illegal under this law. There is one game out there now they would have to stop and the estimated cost might be \$1,400 to \$1,500 in ticket expense.

SEN. BEA MCCARTHY asked if the MT Senior Citizens Association had a suggestion for replacing the money in the General Fund. **Mr. Bertelsen** replied the money comes from the same source. That was a much more honest way of taxing. **SEN. MCCARTHY** responded that she didn't understand his answer; what did he want to increase? **Mr. Bertelsen** answered whatever is necessary. If they are going to take it from the people, and in this case many times from the poor, maybe it would be better to increase income tax or other taxes. That is the way we have run government for hundreds of years. This is an insidious and devious way to bring in revenue.

SEN. JOHN HERTEL asked what was meant by certain scratch ticket games that represent games currently prohibited. **Mr. LaChere**

provided samples of those types of games, **EXHIBIT (bus28a02)**. Some of these depict a play like a slot machine but obviously it is a scratch. Others have more of a fun sort of theme in terms of the presentation but again would be associated with the slot machine. The lottery does blackjack type of games where they use cards and the consumer would have to add up to get 21 in terms of number under the latex.

{Tape : 1; Side : A; Approx. Time Counter : 13.5}

SEN. MIKE SPRAGUE asked if the retro-activeness of this bill brought the financial obligation of destroying what the lottery had currently printed. **Mr. LaChere** answered the number given before is the lottery's estimation of what they will have to destroy as far as tickets are concerned and that would be between \$1,400-\$1,500. The fiscal note talks about future possibilities in terms of losses because there are people who like these kinds of games and will only play certain types of games. **SEN. SPRAGUE** asked if there was a marketing technique that says the lottery won't want to put something in just because it is a game of chance, like keno. **Mr. LaChere** responded there are people who perceive things in that way, who would not want to play a game that is more complicated.

SEN. DALE BERRY asked if the committee is going to eliminate any drain on the folks who have a problem with gambling. **Mr. LaChere** replied he didn't know the answer to the question. He would not say if they would or wouldn't.

SEN. JOHN HERTEL asked if these cards have always been prohibited or were illegal. **Mr. LaChere** answered that the cards are not illegal under the current law. The bill will now make the games illegal.

Closing by Sponsor:

SENATOR DUANE GRIMES. People who are least able to afford to spend money on lottery tickets are the people who are buying them. That means whatever happens to the lottery in the future behooves us as a legislature to make sure that we know how far the lottery may or may not expand. It is very important to establish exactly what the lottery should or should not be doing.

{Tape : 1; Side : A; Approx. Time Counter : 19}

HEARING ON SB 318

Sponsor: SENATOR WALTER L. MCNUTT, SD 50, SIDNEY

Proponents: John Alke, Attorney, Montana-Dakota Utilities Co.

Opponents: Jerome Anderson, Attorney, Shell Oil Co.
Keith Krause, Strategic Energy, Ltd.
Dave Fisher, Chairman, Public Service Commission
Mick Robinson, Governor's Office
Stan Kaleczyc Burlington Resources
Ed Bartlett, Montana Power Co.

Information Testimony: Debbie Smith, Natural Resources Council

Opening Statement by Sponsor:

SENATOR WALTER L. MCNUTT, SD 50, SIDNEY. Senate Bill 318 is a result of last session's SB 390. The information available was customers would see lower power bills if they had an opportunity to choose their electric supplier. The act differentiates the differences between these entities. There are two big electric utilities in the West: Montana Power and Pacific Power and Light. They will begin their transition to customer choice on July 1, 1998, and their transition is projected to take about 4 years. Since then Pacific Power has sold its interest in Montana territory to Flathead Electric Coop. Electric coops were given the right to choose trunks and Flathead Electric and Glacier Electric have elected to do that. Montana-Dakota Utility Company (MDU) was given the right to tie its implementation to customer choice in Montana to the implementation of customer choice in North Dakota. The subsection has a "no later than" provision which requires them to be in its transition to customer choice no later than July 1, 2002. This bill does only one thing -- it removes the "no later than" provision from Section 69-3-201, Section 3. The move to customer choice was intended to benefit all customers in Montana. Listen carefully to MDU's concerns.

Proponents' Testimony:

John Alke, Attorney, Montana-Dakota Utilities Co. The company believes if a small change requested in SB 318 is not adopted by the legislature, our customers will see a rate increase, rather than rate decrease, as a result of customer choice. It is really important to understand the huge significant differences between the Montana Power Company (MPC) and the grid in which it operates and Montana-Dakota (MDU) and the grid it operates. The map divides the cooperatives' service areas **EXHIBIT (bus28a03)**. The yellow box shows the approximate location of the grid line between the Western Power Grid in which MPC operates and does business and the mid area power pool map in which MDU does

business. These two systems are physically separated. They are intentionally designed so that electricity cannot flow freely from the western grid to the eastern grid and that is done for reliability purposes. If there is a major fault in the western grid or the eastern grid, you do not want that fault to continue cascading across the country. These grids, systems in which MDU operates and MPC operates, are physically separated from each other. MPC's grid, the Western States Coordinating Council, is the entire western half of the United States. The MDU grid is upper Midwest, North Dakota, South Dakota, a substantial bit of Montana, Minnesota, Iowa, Nebraska, a little piece of Wisconsin and a little of Illinois. There is a tremendous difference in the characteristics of the generation in these two grids. The western grid, in which MPC does business, has a huge amount of hydroelectric resources available. There is a huge federal power marketing agency, DPA, which controls a massive amount of power and it is cheap. In the MDU grid there is very little hydro-power available. Also, in the MDU grid, Western Area Power Administration is very similar to DPA. It has only a tiny fraction of the generation resources that DPA has.

There is a difference in the diversity of the generation, even at the expensive end; in the western grid there are large nuclear plants recently built in Arizona and California which are extraordinarily expensive units to build. There are six small nuclear plants that are very old and which were built at a time when plants could be built very cheaply. That is important when understanding and analyzing the merits and demerits of customer choice. The theory behind customer choice is there is a surplus of generation available and a tremendous variation between expensive generation and cheap generations. If you allow customers to select their supply in that situation, they will be able to save more money on a generation side than the cost of implementing open access on the distribution and transmission side. The savings are supposed to come from the generation piece. In our power pool, a homogenous pool, it is dominated essentially by coal-fire generating station. There is not the high end, very expensive nuclears, and not the low end, high bill. The diversity of generation in our pool is not as great as the diversity of generation in the western grid and the price differentials are not as great. MDU operates the single integrated electric system in North Dakota, South Dakota, and Montana. Twenty-five percent of their customer load integrated system is in Montana, 65% is in North Dakota and 10% is in South Dakota; however, at the current time North Dakota and South Dakota have expressed little interest in choice. North Dakota is currently on a six-year study plan and is studying the tax ramifications of electric restructuring first, i.e. it will be at least six years before North Dakota will even decide whether it will go to open access. South Dakota has no interest in open

access; in fact, Montana is the only state that has an interest in open access, even though most of Montana is not in our power grid but is in the Western Power Grid where they believe open access makes sense.

When SB 390 was enacted into law, the Legislation recognized that simply mandating customer choice doesn't make sense. There were three basic groups: (1) Two major investors -- PP&L and MPC in the heart of the Western Grid. They were required to begin customer choice on July 1, 1998, and it would run for four years; (2) Coops could elect out of customer choice -- currently, only two have elected customer choice (Flathead Electric Coop & Glacier Electric Coop); (3) MDU was not required to implement open access in Montana on a stand-alone basis -- the bill stated we were entitled to tie our implementation to that of North Dakota. That was because by this time, it was thought the federal government would have mandated open access for all states at the federal level; however, that didn't happen.

If MDU is required to implement open access in Montana on a stand-alone basis, all of the administration, operation, customer service and billing will not be spread over 100% of our customers, but will be borne solely by Montana rate payers. In order for open access to work in theory in the MDU system, Montana customers would have to absorb the costs of implementing open access but generate enough savings on the generation side to make them net winners rather than net losers. MDU strongly believes if it is required to implement open access in Montana on a stand-alone basis, the risk is extraordinarily high that our customers will be net losers because under the law, they will essentially be required to do it alone.

MPC will say it has spent millions of dollars implementing open access -- it's not cheap. If you spread those costs all across your customers and they can pick up cheap generation, it makes sense. However, those millions of dollars in the MDU system will be borne solely by our Montana customers and unless the projected savings in generation materializes, open access in our system will not result in customer benefit; rather, it will result in a rate increase. **SB 318** does one thing -- still ties our implementation in Montana to that of North Dakota but it removes the requirement we must file a plan in 2002, even if North Dakota does not have open access. MDU thinks it's critical to avoid the situation that we are forced to go open access in Montana on a stand-alone basis. It's true MDU could go to the Commission to petition delaying open access from 2002 to 2004; however, the legislature made a mistake because it doesn't change the 2006 date. Montana contemplated moving the four-year cycle from the first date of open access implementation to the final end date when all customers would have choice. The length of the

transition period is critical in imposing transition charge -- if we have to recover all our transition charges over a two-year period, Montana customers will see a significant rate increase.

This bill has nothing to do with MPC or the wisdom of the 1997 Legislature's wisdom to implement choice. It insures that a small segment of MDU customers in eastern Montana will not see a rate increase because of customer choice. I ask for a DO PASS.

{Tape : 1; Side : A; Approx. Time Counter : 38.9}

Opponents' Testimony:

Jerome Anderson, Shell Oil Company. He read his written testimony **EXHIBIT (bus28a04)** and distributed **EXHIBIT (bus28a05)**, **EXHIBIT (bus28a06)** and **EXHIBIT (bus28a07)**.

{Tape : 1; Side : B; Approx. Time Counter : 0}

Keith Krause, Shell Oil Company. He read his written testimony **EXHIBIT (bus28a08)**.

Dave Fisher, Montana Public Service Commission. He read his written testimony **EXHIBIT (bus28a09)** and proposed the amendments in **EXHIBIT (bus28a10)**.

{Tape : 1; Side : B; Approx. Time Counter : 8.4}

Mick Robinson, Governor's Office. In January, 1997, the Governor said Montana could benefit from an efficient electricity marketplace that affords consumers access to competitively priced electric supplies. One of the governing principles we worked on in developing SB 390 was legislation should establish a date by which all Montanans could choose their electricity supplier, i.e. competition was a very critical element. All concerned groups and individuals felt a date certain was critical to both customer and utility planning. Also, all customers should be able to access competitive markets and choose suppliers as quickly as possible, preferably at the same time. We did compromise on that principle when putting together SB 390. As for **SB 318**, my initial reaction was, "Why now?" SB 390 is in place, which requires MDU to file a transition plan July 1, 2002 -- a significant period of time between now and then. My biggest concern is none of us really knows the issue regarding MDU and their territory because it hasn't been a point of emphasis for any of this restructuring discussion. This particular issue, if it was critical, could have been brought forward to the Transition Advisory Committee that was dealing with electricity restructuring issues during the interim -- I don't recall that

being addressed. Whether the customers or MDU will be positively or negatively impacted with the language in statute at this point, I'm not sure any of us can give a definite answer because presently, none of us know the facts. We will have significant technological changes from now until 2002 that may deal with some of the issues regarding the Western grid, the Upper Midwest grid in terms of transfer of power. Again, I would ask "Why now?" because we still have some time to look at the issue. None of us want to move forward with something that won't be positive for customers; however, we have some different presentation with MDU concerned with the negative impact on customers but we have major customers looking at the positive aspects of moving into competition.

Stan Kaleczyc, Burlington Resources. Burlington Resources supports deregulation and open access in a competitive environment in the purchase of electricity and opposes an indefinite suspension or postponement of that competitive environment. We ask you to reject **SB 318**.

Ed Bartlett, Montana Power. We oppose this bill and there are two primary reasons for my testimony: (1) In 1997, the legislature determined it was sound public policy to offer competition for electricity to be supplied to all Montana citizens. We hope this legislature doesn't decide to limit it and provide it to only some Montana citizens; (2) The date certain was an extremely important element throughout SB 390 and still remains so. There's ample flexibility and authority in current law and it doesn't need any amendment or deletion.

The reasons for change, as you've heard today, are some of the same reasons the legislature heard in 1997; at that time it played a large part in the reason for the MDU extension. We see no reason to change that provision and delay, perhaps forever, the opportunity for customer choice in eastern Montana.

{Tape : 1; Side : B; Approx. Time Counter : 16.4}

Informational Testimony:

Debbie Smith, Natural Resources Defense Council and Renewable Northwest Project. These groups take no position on **SB 318**, its merits or demerits. What happened between the 1997 Session and this bill today is an increasing awareness with more knowledge that for other than the largest customers, retail competition for supply is developing quite slowly. I believe the purpose of the bill is to protect those customers for whom retail competition of supply has not yet developed and may not develop for many years to come. An orderly transition to customer choice is important.

States which have no supply deregulation law have something called virtual deregulation, i.e. large customers go out, strike better deals, leave the system and leave the costs on the backs of other customers. That is the worst situation Montana small customers could be in. The issues here are sort of opposing because the small customers need to be protected, yet an orderly transition to large customer choice needs to be provided in a way that isn't a disadvantage to the small customers. I believe MDU's current residential rate is six cents per kilowatt hour and that rate is in part a subsidized rate from the large customer load. That's why it's important the large customers don't leave by means of virtual deregulation; however, something also has to be done for the small customers, which are most of MDU's customers.

Questions from Committee Members and Responses:

SEN. FRED THOMAS said he understood MDU wanted an indefinite extension and wanted to separate out Montana. **John Alke** said that wasn't a problem because MDU had open access on the wholesale system; however, the problem is when open access is retailed on a large-scale basis, there are very real and significant costs in putting a retail open access system together. The problem isn't that we're going to incur those costs if this bill doesn't pass; rather, all of those costs will be borne by Montana customers. If we delay implementation of choice until it can be done in North & South Dakota and Montana, 75% of the costs that would otherwise be borne by the Montana rate payer will be exported to North & South Dakota, as it should be.

SEN. THOMAS asked if open competition could be avoided indefinitely. **Mr. Alke** said it absolutely couldn't and the bill didn't do that. All we're saying is we shouldn't be forced to go to open basis in Montana on a stand-alone basis because all the costs will be borne by the Montana customers. If the federal government "steps up to the plate" in two years and mandates open access in all 50 states, we don't have a problem because then North & South Dakota will bear their share.

SEN. THOMAS said it was inevitable and suggested if MDU did it now, all the costs incurred in preparing for the future market would be borne by Montana customers and that would put MDU in a very uncompetitive position and it wouldn't be selling a lot of electricity. **John Alke** said under SB 390, as currently structured, it's not a free move from the current integrated system to open access. Those costs will be totaled up and during the transition period they will be paid by all customers. The theory is in the first four years there's going to be additional

costs and at the end of the four years a transition cost but a benefit of everybody enjoying reduced generation. That's not going to change whether MDU has open access in 2002, 2004 or 2996.

SEN. THOMAS asked if there was another Montana area that needed jobs and economic development more than eastern Montana. **Mr. Alke** said their projections were the demographics in that area were so bad that in the next 10 years, population in their service territory would shrink, i.e. there was not another Montana area that was worse.

SEN. FRED THOMAS commented because of **SB 390**, people were saving money on their electrical bill and asked if MDU would be agreeable to opening up their territory to larger users by July, 1999. That would help in keeping present jobs and would possibly add more. **John Alke** said they wouldn't because MDU had 23,500 electric customers in Montana and had almost four customers whose use was one megawatt or larger -- these were for oil recovery operations and pipelines. They're not using electricity to build buildings or factories; they're using it for pumping and transmitting oil out of the ground. Whether they do that will be determined by the price of oil, not electricity -- if the electric rates go down, they won't hire more people. The PSC faxed me some amendments but I amended them **EXHIBIT(bus28a11)** so we have to return to the Commission and we have the right to petition the Commission to change both the filing and final ending date. We have no problem with that because we're convinced that if the Montana Public Service Commission believes that open access in our system will be bad for the majority of our rate payers, it will say "no." We have no objection to see **SB 318** modified so our decision in Montana is not unilaterally our own but is subject to review by the Montana Public Service Commission.

{Tape : 1; Side : B; Approx. Time Counter : 30.9}

SEN. DALE BERRY said he understood North & South Dakota would never be regulated. **Mr. Alke** said he couldn't say "never" but at this time it seemed they weren't interested. However, if the federal government decided open access at the retail level would be done in all 50 states, MDU would immediately implement open access.

SEN. MIKE SPRAGUE asked about kilowatts or total business needed by the 23,500 customers -- what was the percentage. **John Alke** said the percentage figure he gave was based on energy usage.

SEN. SPRAGUE asked if the Governor would veto **SB 318** in its present form. **Mick Robinson** said he couldn't make that judgment.

SEN. SPRAGUE asked if this issue was discussed by the interim committee. **SEN. MCNUTT** said it didn't come to his attention until shortly before the legislature convened.

SEN. BEA MCCARTHY asked for comment on the amendments to the amendments. **Dave Fisher** said **Mr. Alke** presented his amendment to them before the hearing but haven't had an opportunity to review it. Personally, it seemed reasonable but he wanted more time to study it.

SEN. MCCARTHY asked if his staff could look at it and get back with the Committee before they took action and **Mr. Fisher** agreed.

SEN. THOMAS asked for reaction to the amendment by PSC. **Jerome Anderson** said he understood it allowed MDU to apply to the PSC for a waiver or extension of the requirement to deregulate. He had considerable faith in the PSC but he believed this was a legislative question that should be answered by the legislature itself, i.e. it's a policy question that affects the economics and business structure of eastern Montana.

SEN. JOHN HERTEL asked if the above statement was for this particular amendment or the PSC amendment. **Mr. Anderson** said he understood there wasn't too much difference between the two. He did understand, though, that PSC would be in control and he didn't know if it would be necessary to keep MDU's "feet to the fire" to get this problem taken care of.

Closing by Sponsor:

SENATOR WALTER MCNUTT. We're talking about 23,000+ customers and that's why I brought the bill. My biggest concern is we have yet to pass legislation to exceed our borders -- we can't impact North & South Dakota. If we could have and said all MDU would deregulate and provide customer choice, I wouldn't be standing before you today. I am one of those customers and am one of the guys who provides jobs in eastern Montana; yet, times are tough. However, we don't want the cost to shift, because we want to allow four customers to have a better rate and make that portion of Montana stand alone in deregulation, because it will impact my power bill. We need to move forward and **SB 318** is cautionary; perhaps the fraud does not apply here. Take a close look at the amendments -- we have enough trouble in eastern Montana without increasing those costs. I've talked to a couple of the large customers and others with whom I do business and they're not excited about the prospect of being tagged with those costs,

instead of spreading them throughout the system. I don't want to come back next session or the one after with a bill that says things have to change because we can't afford the power bills over there.

{Tape : 2; Side : A; Approx. Time Counter : 0}

HEARING ON SB 326

Sponsor: SENATOR JON TESTER, SD 45, BIG SANDY

**Proponents: Mike Strand, MT Independent Telecommunications Systems
Geoff Feiss, MT Telecommunications Assoc.
Tim Rixdorf, Sagebrush Cellular
Jerry Williams, MT Police Protective Assoc.
Mike Batista, Dept. of Justice
Bob Anderson, MT Sheriffs & Peace Officers Assoc.**

Opponents: None

Opening Statement by Sponsor:

SENATOR JON TESTER, SD 45, BIG SANDY. This bill makes it a criminal offense to intercept communication over a cellular or cordless telephone. It's a cleanup of a statute -- most people think if they listen in on a cellular message, it's illegal but it's not at this time; however, this bill is trying to make it an enforceable offense. The changes in the bill start occurring on Page 9 with the definition of "telephone", and Page 12 talks about the actual intercepting of the telephone communication. It's important this must be done purposely and knowingly to be an offense.

Proponents' Testimony:

Mike Strand, Montana Independent Telecommunications Systems. The wireless telecommunications industry is one of the fastest-growing segments of the industry as a whole. There's a small but growing reluctance on the part of some users to use their cell phones because of folks using scanning equipment to listen in on cellular phone conversations. Not only is this practice an invasion of privacy, it is also harmful to the prospects of a valuable growth industry in Montana. I urge the Committee to pass **SB 326**.

Geoff Feiss, Montana Telecommunications Systems. We too support this bill for the same reasons -- we think it's great

legislation. I'd like to offer an amendment for Section 3, Lines 8-10, to add "telephone companies that are complying with law enforcement officers."

Tim Rixdorf, Sagebrush Cellular. We've had several people approach us and have been concerned because of their expectation of a certain level of privacy. When they find out that someone has picked up their transmission and shared that information, it's disturbing and harmful. We've had customers comment they're not going to use their phones as much and that decreases potential revenue for us. Law enforcement officers have said they don't have the time to enforce the federal law; however, they have said they would be glad to enforce a law like this.

{Tape : 2; Side : A; Approx. Time Counter : 7.4}

Jerry Williams, Montana Police Protective Association. Our Association endorses this bill and we hope you give it a DO PASS recommendation.

Mike Batista, Department of Justice. We support the bill and believe it provides some insurance mechanisms for protecting privacy of Montana citizens.

Bob Anderson, Montana Sheriffs and Peace Officers Association. We also support the bill for the same reasons previously discussed.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. VICKI COCCHIARELLA asked the meaning of "aiding the avoidance of telecommunications charges" on Page 11, Section 2.

Bart Campbell said it basically meant coming up with various methods or devices to get out of paying your phone bill.

SEN. COCCHIARELLA asked the meaning when "by computer" was added on Line 20. **Mr. Campbell** said it was a method by which you were making it known you had some way of beating the phone charges, i.e. Internet. **SEN. TESTER** said there were methods by which people could get away from paying their charges through illegal means -- radio, television, Internet, etc. **Mike Strand** said it meant the use of calling cards -- there were methods by which you could clone calling cards or use their numbers for a profit so folks end up charging their calls to other folks' calling cards.

SEN. BEA MCCARTHY asked how easy it was to record or tap into a neighbor's cell phone conversation. **Tim Rixdorf** said a cordless

phone was one usually found in a home and was different from a cell phone because they operated on two different frequency ranges. In the past they made scanners that would scan cellular frequencies; in fact, in 1993 when FCC mandated those scanners no longer be manufactured that would scan cellular frequencies. However, it has been very easy to modify these scanners made since 1993 so these frequencies could be scanned; in fact, the instructions for doing this can be found on the Internet. Another issue is the manufacturers put a block in the scanner for 824-896 megahertz, which causes sort of a mirror in the upper scanner frequencies; therefore, starting at 896-900 megahertz range, you are able to pick up the 800 megahertz transmissions. He distributed copies of **EXHIBIT (bus28a12)** and **EXHIBIT (bus28a13)**.

SEN. MCCARTHY said it would be possible for a customer to easily pick up a scanner at Radio Shack, etc., and deliberately listen in on a cell phone conversation. **Mr. Rixdorf** affirmed.

{Tape : 2; Side : A; Approx. Time Counter : 15.5}

SEN. GLENN ROUSH admitted he had one of those scanners and was able to pick up conversations; however, he came from a small community and when he identified who was talking, he called them and informed them what was happening. He asked if **SB 326** included liability for repeating what was heard. **Tim Rixdorf** said it should be because all the scanners allow the capability to block out certain frequency ranges. Also, you have to set the scanner up to go into a scandal because the cell phones were designed to transmit into a different frequency each time it was dialed; therefore, someone has to purposely intend to monitor a cell phone conversation. The intent here is to try to eliminate that because the cell phone conversation should be private.

SEN. ROUSH asked why the consumer, not knowing that, would have to take the liability to get rid of the problem. **Mr. Rixdorf** said the bill said "purposely and knowingly" to go ahead and block those ranges out. You have to actually set the scanner up in order to receive the transmission of the cellular call and while it's doing that, it's not going to be picking up any other transmissions.

SEN. ROUSH asked if the scanner manufacturing company would be willing to correct the problem at its expense, if the customer would want that done. **Tim Rixdorf** said he doubted it because this was a national problem and had been brought to the manufacturers' attention in the past -- they wanted to make scanners that scanned cellular frequencies because it was a big revenue for them.

SEN. MIKE SPRAGUE commented since scanners to pick up cell phone conversations could no longer be manufactured, we were talking about scanners made before 1993. **Tim Rixdorf** said that was correct, but they were also talking about new scanners that could be easily modified to pick up cellular frequencies; in fact, the biggest problem was not with the old scanners.

SEN. SPRAGUE asked if it was illegal to modify them and was told it was federally illegal.

SEN. SPRAGUE asked if he were an individual who was anticipating a threat to his life, or as a public official was in the process of getting a bribe, would it be against the law to anticipate that as being a crime in process or being committed. **Jerry Williams** said as he understood the statute, if he recorded a cell phone conversation without the other party's knowledge, that was against the law; however, if he was offering a bribe, which was a crime because of your status as a public official, and the other party was recording the conversation, that was a crime in progress. Therefore, that would be legal to record without the other party's knowledge.

SEN. SPRAGUE referred to his hypothetical situation and said he didn't know for certain a crime was being committed -- he just surmised it. Therefore, he made the recording, though the surmised crime never materialized and he never used the recording, therefore, nothing illegal was done. He said he didn't want to get citizens into a situation where they couldn't protect themselves. **Jerry Williams** said in **SEN. SPRAGUE'S** official capacity if he suspected their conversation would go awry and he (**Williams**) may offer a bribe or commit some other criminal offense and **SEN. SPRAGUE** began to record the conversation without his knowledge; however, he (**Williams**) doesn't actually commit the criminal offense so **SEN. SPRAGUE** would destroy the recording. **Jerry Williams** said he didn't think in that case, there would be any criminal liability on **SEN. SPRAGUE'S** part because he was acting as a public official; however, if he took the recording to defame his seedy character, it would be illegal.

SEN. SPRAGUE asked about an elderly person who had a scanner and wanted to keep up with the fire, police, ambulance, etc., and wondered if those scanners would be illegal. **Jerry Williams** said they wouldn't because the statute was clear in that you had to purposely and knowingly do this in order to commit the criminal offense. If he was sitting at home listening to his scanner, and a cell phone conversation came over that scanner without his knowledge, he wouldn't have done anything wrong. However, if he

recorded those conversations and used them to harass, intimidate or threaten, he would have committed a crime.

{Tape : 2; Side : A; Approx. Time Counter : 24.7}

Closing by Sponsor:

SENATOR JON TESTER. Keep in mind a couple of things: (1) This bill is to protect privacy; (2) The listening has to be done purposely and knowingly. Right now it's illegal to manufacture scanners that can scan the cell phone frequencies. We're talking about people who have the intent to do this; I wouldn't be paranoid that some elderly folks could be thrown into jail. I urge a DO PASS on **SB 326**.

ADJOURNMENT

Adjournment: 11:15 A.M.

SEN. JOHN HERTEL, Chairman

MARY GAY WELLS, Secretary

JH/MGW

EXHIBIT (bus28aad)